

## UNDERSTANDING PERMITS

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### BUFFER REQUIREMENTS

### NPDES BUFFER REQ

There are several laws in Georgia mandating stream riparian buffer protection. The Georgia Erosion and Sedimentation Act of 1975, O.C.G.A. 12-7-1, *et seq.* (GESA) applies state-wide and is the primary law protecting vegetated buffers. GESA establishes a minimum undisturbed, vegetated buffer of 25 feet for all streams in Georgia (measured from where vegetation is wrested by normal stream flow). Trout streams, both primary and secondary, require a minimum 50 foot undisturbed vegetated buffer. These buffer requirements are also incorporated into the General Construction Permit.

In addition to the state minimum requirements, many cities and counties have buffer ordinances that may require additional buffer protection. There are also some other state and regional laws that may apply depending on the type of development (planning criteria) or the particular location (such as the Metropolitan River Protection Act). It is important to check all of these sources in order to determine the buffer requirements that must be met for a certain development.

#### Major Exemptions to Buffer Requirements:

- Small trout streams with an annual flow of less than 24 gallons per minute (gpm);
  - Sewer and water line crossings;
  - Mining and agricultural activities;
  - Drainage and roadway drainage structures; and/or
  - Where a variance is obtained from the EPD.
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- **Ephemeral Streams** – streams that flow only during and after wet weather events and do not have *base flow* from a groundwater source, have been exempted from the buffer requirements in a rule change to the GESA regulations (DNR Rule 391-3-7.01) in December 2004. However, this rule change does not apply to the General Construction Permit, as the permit language includes *all state waters* without regard to the presence of base flow.

#### Variances:

A variance can be granted *only* by the EPD Director where the Director finds that the if the variance is granted, it will be at least as protective of natural resources and the environment, and where one or more of the following criteria have been met (DNR Rule 39103-7.05):

1. Construction or repair of a structure that must be located in the buffer

Note: The amendments to the Rules in December 2005 included *detention and retention ponds* within the group of structures that must be located within the buffer. However, this is in conflict with a memorandum from the EPD Director and a memorandum from the Army Corps of Engineers and EPA Region 4, indicating that in-stream detention should *not* be used as a means to control sediment. In any event, a 404 permit would still be necessary for any structure placed in a stream.

CONT'D



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Erosion + Sediment Control

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**BUFFER REQUIREMENTS** CONT'D

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2. Restoration and/or enhancement
3. Provision to access the property
4. Gravity flow sewer line that cannot be outside the buffer
5. Crossing for utility lines
6. Recreational foot trails and viewing areas
7. Development of one single family home and cannot be accomplished without the variance
8. The project requires a 404 permit, and has an approved mitigation plan
9. The project will result in improved or maintained water quality
10. The project is on an impaired water, will result in improved or maintained water quality, and will not adversely impact the cause of the impairment ○



Keeping Watch Over Our Waters

